

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Comptroller may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Comptroller shall treat as an unsafe and unsound practice any material failure by a Federal savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

#### § 167.11 Reservation of authority.

(a) *Transactions for purposes of evasion.* The Comptroller may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this part.

(b) *Average versus period-end figures.* The OCC reserves the right to require a Federal savings association to compute its capital ratios on the basis of average, rather than period-end, assets when the OCC determines appropriate to carry out the purposes of this part.

(c)(1) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in §167.5 of this part, the OCC may find that a particular type of purchased intangible asset or capital instrument constitutes or may constitute core or supplementary capital, and may permit one or more Federal savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the OCC may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its contribution to a Federal savings association's ability to absorb losses, and the OCC may require the discounting or deduction of such asset

or component from the computation of core, supplementary, or total capital.

(2) Notwithstanding §167.6 of this part, the OCC will look to the substance of a transaction and may find that the assigned risk weight for any asset, or credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on the savings association. The OCC may require the savings association to apply another risk-weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate.

(3) The OCC may find that the capital treatment for an exposure to a transaction not subject to consolidation on the savings association's balance sheet does not appropriately reflect the risks imposed on the savings association. Accordingly, the OCC may require the savings association to treat the transaction as if it were consolidated on the savings association's balance sheet. The OCC will look to the substance of and risk associated with the transaction as well as other relevant factors in determining whether to require such treatment and in calculating risk based capital as the OCC deems appropriate.

(4) If this part does not specifically assign a risk weight, credit equivalent amount, or credit conversion factor, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that it deems appropriate. In making this determination, the OCC will consider the risks associated with the asset or off-balance sheet item as well as other relevant factors.

(d) In making a determination under this paragraph (c) of this section, the OCC will notify the savings association of the determination and solicit a response from the savings association. After review of the response by the savings association, the OCC shall issue a final supervisory decision regarding the determination made under paragraph (c) of this section.